
HALDIMAND COUNTY

Report PDD-45-2021 Zoning By-Law Amendment to Repeal Development Freeze for Lands in the Industrial Influence Area - Devries

For Consideration by Council in Committee on August 24, 2021



OBJECTIVE:

To request consideration to amend the Haldimand County By-law HC 1-2020 to facilitate the construction of a single detached dwelling on farmland with a development freeze.

RECOMMENDATIONS:

1. THAT Report PDD-45-2021 Zoning By-law Amendment to Repeal Development Freeze for Lands in the Industrial Influence Area - Devries be received;
2. AND THAT application PLZ-HA-2021-100 to amend Zoning By-law HC-1-2020 to repeal special provision NAN.A.2 in order to permit a single detached dwelling be refused for the reasons outlined in Report PDD-45-2021;
3. AND THAT the proposal as submitted is considered inconsistent with the Provincial Policy Statement 2020, the Provincial Growth Plan 2020 and other matters of provincial interest.

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Reviewed by: Shannon VanDalen, MCIP, RPP, CMMI, Manager of Planning and Development

Respectfully submitted: Mike Evers, MCIP, RPP, BES, General Manager of Community & Development Services

Approved: Craig Manley, MCIP, RPP, Chief Administrative Officer

EXECUTIVE SUMMARY:

The subject Zoning By-law amendment has been submitted to construct a single detached dwelling on a vacant parcel on Concession 3 Walpole. The lands are designated 'Agriculture' and zoned 'Agricultural' with a site specific exclusion for a dwelling, and are situated within the Industrial Influence Area of the Official Plan which serves as a layer of protection for industrial development by significantly limiting opportunities for sensitive development (e.g. residential).

It is the opinion of Planning staff that the zoning amendment to permit single detached dwelling should not be supported given the implications for the broader policies of the Official Plan that serve to protect and promote the area for industrial development. Allowing permanent residential construction at the subject lands would serve to potentially sterilize large portions of industrially designated and zoned properties by creating setback requirements which could prohibit construction, resulting in siting/layout challenges, or require costly mitigation measures. Any changes to the current policy framework which serves to reduce land use conflicts between existing and potential future heavy industry and associated impacts such as truck traffic, noise or other emissions should be conducted comprehensively rather than on an incremental ad hoc basis.

BACKGROUND:

The subject lands are currently in agricultural production for cash-cropping, and vacant of any structures. The subject lands are located on Concession 3 Walpole, and are legally described as Part Lot 7, Concession 3, RP 18R4625 – Part 1, Geographic Township of Walpole, Haldimand County. The property and is located at the intersection with Concession 3, Walpole and Haldimand Road 55. The subject lands are identified in Attachment 1. The subject lands are predominately designated and zoned for agricultural uses, with a band of Riverine Hazard Land designation and associated hazard land zoning bisecting the lands and creating the boundaries where the special provision is proposed to be repealed. In order to assist with the application and to provide a planning argument, the applicants have retained the services of LandPro Planning Solutions to prepare a planning justification brief. The sections of the brief are discussed in the relevant sections of the staff report.

As noted above, the subject lands are located within the Industrial Influence Area that extends over a larger area in this portion of the County. The lands are also located in the vicinity of several industrial operations that range in size and scale. The lands are also located adjacent to a rail corridor that services these industrial uses. All of these factors have combined to result in designation and zoning that is specific in its intentions for reducing opportunities for conflicts between sensitive land uses and the neighbouring industrial land uses.

ANALYSIS:

Planning staff has identified the following key planning issues that have been investigated during the review of this proposal:

Provincial Policy Statement (2020)

The PPS is a policy document that establishes Provincial policy direction on matters of provincial interest relating to land use planning and development within the Province of Ontario. While the subject lands are designated Agricultural in the Haldimand County Official plan, the PPS includes a suite of policies that require planning authorities to plan for, protect and preserve employment areas for current and future uses. There is the potential for impact to the surrounding lands, where employment uses may be located in the future. The key concerns and policy conflicts are described below.

The Planning Justification Brief prepared to support the application contains an analysis that stems from the policies contained in Section 1.1.5 Rural Lands in Municipalities, and policies contained in the section 1.2 Coordination.

The policies from 1.1.5 focus on the development opportunities in rural lands in a municipality. The specific policy references pertain to policies that are intended to guide residential development in these areas of a municipality; section 1.1.5c) directs that permitted uses in rural lands in a municipality can include residential development and lot creation that is locally appropriate. Section 1.1.5.4 directs that municipalities should promote development that is compatible and sustainable with the rural landscape. The policy references from Section 1.2 suggests that the proposal will conform with policy 1.2.6.1 which stipulates that sensitive land uses near major facilities need to be planned and developed in such a way as to minimize and mitigate adverse effects. The policies referred to from section 1.2.6.2 describe the requirement for an identified need for the sensitive land use (a dwelling) to be situated at a specific location near an industrial use and that alternative locations are considered. Further, the PPS section of the Brief suggests that this proposal presents an opportunity to allow for a range and mix of housing options for residents. Planning staff have considered these policy excerpts, and offer the following analysis.

All properties surrounding the subject lands are within the Industrial Influence Area of Haldimand County. The properties to the immediate, south, west and east are designated as 'Agricultural' in the

Official Plan. The lands to the north are subject to a Special Policy Area HCOP-13 which provides support for a natural gas-fueled electricity-generating station. Beyond these immediately neighbouring lots, there are properties that carry heavy industrial zoning, or have site specific zoning that permits uses that would fall into this classification. The nearest of which is approximately 650 metres away from the subject lands. If this application is approved as it has been submitted, the construction of a permanent single detached dwelling on the subject lands has the potential to impact future expansion opportunities for existing uses on surrounding properties. Stemming from this concern and in order to respect the existing uses, and the potential to locate similar uses in the neighbouring area, staff are required to assess the land use implications using the Ministry of Environment and Climate Change's D series Guidelines, specifically D-6 Section 4.4.5 Vacant Industrial Land. Those Guidelines set out the determination of the potential influence area and shall be based on a hypothetical "worst case scenario" for which the land may be used. As there is the potential for heavy industrial type uses (based on the zone of same name) in the area around the subject property, it results in an influence area of 1,000 metres extending from the boundaries of the properties in question. Therefore, the siting of a dwelling on the subject lands could create setback requirements for the adjacent lands that cannot be met or which would require significant/complex site design or mitigation measures to allow industrial development to advance. These impositions would serve to constrain development potential on those lands. There are existing dwellings further to the east, which are in closer proximity to these industrial uses, however planning staff are unable to support a situation where an ongoing issue may become compounded and would result in greater impacts to the residential use or existing or future industrial uses.

Permitting a permanent single detached dwelling on the subject lands is inconsistent with the PPS as the PPS directs planning authorities to plan for, protect and preserve employment areas for current and future uses. Sterilization of properties specifically designated for future industrial uses through the introduction of a sensitive land use offends the PPS. The PPS also directs planning authorities to promote economic development and competitiveness by providing opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment uses which support a wide range of economic activities and ancillary uses, and take into account the needs of existing and future businesses. Again, sterilization of industrial lands offends this policy of the PPS.

The PPS also directs planning authorities to protect employment areas in proximity to major goods movement facilities and corridors for employment uses that require those locations. Major goods movement facilities and corridors are defined as transportation facilities and corridors associated with inter- and intra-provincial movement of goods which in this case would include the rail line to the south. Staff are aware of a number of industrial uses which use these rail lines to transport their goods and products, and some of the proponents for these uses have sought these locations specifically for the access to the rail line. The conflict may be aggravated further as the owner and operators of the rail line have entertained the possibility of upgrading the infrastructure to accommodate more traffic, which would potentially result in increased noise and vibrations in the future. The proposed dwelling may impede future uses from being attracted to these sites that allow for access to this transportation corridor. The industrial designation and development vision for this area is driven in part by the location of the lands relative to these transportation systems. For these reasons, approving the proposed dwelling would have a significant impact on the development opportunities that exist for the surrounding properties, a possibility that offends the PPS.

Growth Plan for the Greater Golden Horseshoe (2020)

The Growth Plan for the Greater Golden Horseshoe is the framework for implementing the Government's vision for building stronger, prosperous communities by controlling growth until 2051.

The Planning Justification Brief that was prepared to accompany the subject application focusses on the support within the Growth Plan for residential development, housing types and options and the

requirement for municipal planning tools that inform development opportunities on rural lands. The Brief does not describe to concerns that must be given for employment uses and their viability, as well as the responsibility to mitigate against the potential for impacts between these uses and sensitive land uses such as dwellings.

To expand on the policies contained within the Growth Plan, the policies contained here recognize that in preparing for the future, it is essential that planning for the Greater Golden Horseshoe take into the account the importance, and the unique characteristics and strengths of its economy. This includes a diverse economy supported by a wide array of manufacturing industries. The Growth Plan includes policy directions that preserve employment areas for future economic opportunities. More specifically, the Growth Plan envisions that population and employment growth will be accommodated by ensuring the availability of sufficient land for employment to accommodate forecasted growth to support the Greater Golden Horseshoe's economic competitiveness.

To accomplish this, the Growth Plan at the request of Haldimand County has identified areas within Haldimand County as Provincially Significant Employment Zones (PSEZ). The subject lands are located in between two of these Provincially recognized areas (Attachment 4). The nearest of these provincially identified zones is situated within the 1,000 metre radius that was discussed earlier in this report. With this in mind, the proposed dwelling would restrict development opportunities for land that are identified on a provincial scale through the authority of this planning document.

The remaining policies echo and support the policies of the PPS. As such, it is Planning staff's opinion that the proposal to construct a permanent single detached dwelling is inconsistent with the Growth Plan for the same reasons listed in the PPS section above.

Haldimand County Official Plan

The policies originating at the provincial level are focused to a local context though the Haldimand County Official Plan. The subject lands are designated as 'Agriculture' in the Haldimand County Official Plan, while being located within a broader overlay identified as the 'Industrial Influence Area'.

Planning staff have a number of concerns with the zoning request and are of the opinion it does not conform to the overall intent of the Official Plan for a number of reasons, which are discussed in detail below. The concerns with the subject application pertain to a number of sections of the Official Plan, including the following:

1. Industrial Influence Area;
2. Strategic Employment Area; and
3. Land Use Compatibility with Existing Land Uses.

Each policy area will be discussed in a separate section below.

Industrial Influence Area:

The subject lands are designated 'Agriculture' with an overlay of 'Industrial Influence Area'. While ancillary residential is permitted in most agricultural areas, in this location the policy intent for over 30 years has been to not permit it on the basis it is a sensitive use and can conflict with business activities. To expand, the subject lands are located wholly within the Industrial Influence Area (IIA) of Haldimand County. In fact, the subject lands rest very near the centre of the larger industrial area in this location (see Attachment 5). It is that key location that is of particular concern to this application. The IIA is unique to Haldimand County and consists of an area delineated around the exterior properties of the Stelco steel mill, Imperial Oil refinery, former Hydro generating station, as well as the area delineated around the exterior of the lands designated 'Industrial' as shown in the Haldimand County Official Plan. The purpose of the IIA is to ensure that development in the 'Major Industrial' and 'Industrial' designations continues to be the focal point for large scale and heavy manufacturing uses within the area and to protect such industrial uses from incompatible land uses (e.g. residential development)

which would detract from their ability to operate effectively through the restriction of new incompatible land uses. The purpose of the IIA is also to ensure the viability of the heavy industrial uses within Haldimand County and the integrity of planning rationale for originally establishing the Industrial Influence Area is maintained to limit land use incompatibility.

The designations within the Industrial Influence Area include the following: 'Major Industrial', 'Industrial', 'Hamlet' (Hamlet of Nanticoke), 'Mineral Aggregate Resource Area', 'Agriculture', 'Lakeshore Hazard Lands' and 'Riverine Hazard Lands'. To avoid being overly restrictive, the policies that direct development within the Industrial Influence Area do permit limited residential development within this area in the appropriate designations ('Hamlet' and 'Agriculture' designations) subject to a number of criteria. The rationale for this is these areas already represent groupings of long standing residential development and any impacts to industry are already in place – no new compatibility issues are generated. The policy intent is implemented via the Zoning By-law which does not allow residential for the subject lands since there is a site specific provision that applies to the subject lands through the Haldimand County Zoning By-law HC 1-2020. This provision exists for this property (as well as others in the larger area) but is not applied uniformly. This will be discussed in more detail below, but it is important to note that the as-of-right land use permissions are identified in the Zoning; and for this site in particular the permitted use for a dwelling has been specifically removed. Along this theme, the Planning Justification Brief contains a policy excerpt from the Haldimand County Official Plan that supports residential development on lots of record within the IIA that existed prior to 1980. The Brief confirms that the deed for the subject lands was registered prior to the cut-off date identified in the policies as October 23rd 1980. However, staff are of the opinion that the development freeze supersedes the development support for lots of record identified above. Considering these details, Planning staff are of the opinion that the contradiction presented by this policy misalignment, summarizes to mean that the proposed dwelling does not uphold the general intent of the policies of this section of the Haldimand County Official Plan. Further, it is Planning staff's opinion that the proposal to construct a single detached dwelling on the subject lands offends the Industrial Influence Area (IIA) policies. Introducing a sensitive land use within the IIA would have the potential to sterilize surrounding industrial lands undermines the integrity of the Industrial Influence Area and the purpose for establishing this area in the first place.

Strategic Employment Area:

The subject lands are also part of the Strategic Employment Area as identified in the Official Plan. The Strategic Employment Area, established as part of the County's Growth Plan conformity amendment in late 2011, consists of the Nanticoke Industrial Area and the associated Industrial Influence Area. In addition, as noted in the Growth Plan section above, Haldimand County requested that the Province - through its 2019 update to the Growth Plan - include the Nanticoke/Lake Erie industrial lands as Provincially significant in the Provincial policy document. That was fully supported and implemented by the Province. Given this, any alterations to the industrial area and changes to the IIA should be considered in a comprehensive manner with a variety of options examined.

These special designations (in both Provincial and local policy documents) give recognition to the importance and potential of this area (for job creation/business attraction) and provide an additional level of protection that restricts conversions to non-employment uses and limits sensitive uses that could obstruct industrial development. The area has been identified as a Strategic Employment Area, and clearly identified for employment use protection, given its regional and provincial significance. That significance is the result of the following:

- a) large amount of contiguous land appropriately designated for employment uses including large land extensive uses;
- b) unique planning framework that minimizes potential land use conflicts with sensitive land uses via the Industrial Influence Area policies;

- c) proximity to large regional labour force and significant growth areas;
- d) land is accessible by Provincial Highway system, rail and water;
- e) land is directly linked to John C. Munroe International Airport via Highway 6;
- f) land has significant electrical distribution network infrastructure; and
- g) Haldimand County has developed a servicing strategy and a capital budget that will in part facilitate development of some of the lands by installing critical sewer, water and other services.

Given the subject lands fall within the Strategic Employment Area (SEA), staff are of the opinion that introducing a sensitive land use on property, which has the potential to sterilize surrounding industrial lands, undermines the intent and purpose of the larger SEA.

Land Use Compatibility with Existing Land Uses:

Staff have assessed the policies of the Official Plan relative to compatibility of land uses in connection with the Ministry of Environment and Climate Change's D-Series Guidelines. The D-Series Guidelines ('Guidelines') identify the direct interest of the Ministry of Environment and Climate Change in recommending separation distances and other control measures for land use planning proposals to prevent or minimize adverse effects from the encroachment of incompatible land uses where a facility either exists or is proposed. The objective of the Guidelines is to minimize or prevent, through the use of buffers, the exposure of any person, property, plant or animal life to adverse effects associated with the operation of specified facilities. The Guidelines have a dual nature such that they are applicable when:

- a) a new sensitive land use is proposed within the influence area or potential influence area of an industrial facility; and/or
- b) an industrial facility is proposed where an existing sensitive land use would be within the facility's influence area or potential influence area.

Notwithstanding the lands to the south which carry the 'Agriculture' designation, a significant amount of the surrounding (abutting) land is identified for industrial uses. Although a new industrial facility is not currently proposed on lands within the surrounding area, it is important to recognize that the surrounding lands to the north, east and west are designated for future industrial facilities and pre-zoned to allow for 'heavy industrial' operations such as material and chemical manufacturing, food processing and waste operations. These are as-of-right privileges associated with the adjacent lands that could be significantly impacted with the introduction of a new permanent dwelling. The nearest of these lands zoned for industrial uses are located approximately 650m away from the subject lands. Given the 1,000 metres buffer area (as noted above) this represents a significant imposition to future potential development – a 350 metres encroachment that could either negate development or result in significant mitigation measure costs/efforts for future developers. To protect against any such impacts, it is essential that the County plans for the protection of industrial lands. The D-Series Guidelines provide a valuable tool in assessing potential for impact in this particular matter and a full assessment is included in the paragraphs below. The D-Series Guidelines specifically provide direction on land use decisions for vacant industrial lands. The Guidelines direct that where there is no industrial facility within the area designated and zoned for industrial land use (i.e. such as the lands to the north, east and west of the subject lands), determination of the potential influence area shall be based upon a hypothetical "worst case scenario" for which the zoned area is committed. Based on this, staff are to use the greatest extent of the potential influence in order to determine an appropriate separation distance. The potential influence area is defined in the Guidelines as the area identified where adverse effects are generally expected to occur. A potential influence area acts as a potential constraint for a sensitive land use or a facility, unless evidence is provided that adverse effects are not a problem, or can be satisfactorily mitigated to the level of trivial impact. Based upon the existing Heavy Industrial (MH) zoning of the surrounding lands, an influence area of 1,000 metres would apply due to the noise odour, vibrancy or unsightliness that could be associated with the facilities permitted on those lands (referred to as Class

3 in the Guidelines). Planning staff note that the 1,000 metre buffer extends towards the existing industrial use to the east, in addition the recent development of lands to the west of Haldimand Road 55 falls within this setback, as it is approximately 650 metres away. The lands identified by Haldimand County Official Plan-13 lie immediately across the road, and the 1,000 metre buffer precludes development opportunities on all of the Special Policy Area. It is Planning staff's opinion that the impact of the proposed dwelling could include building size/location limitations for nearby industrial uses due to the need for extensive setbacks/buffers; the need for costly studies/mitigation measures for sites/buildings to address noise, dust and vibration; or, complete restrictions on certain types of development due to proximity of a dwelling.

Summary:

Based on the foregoing, Planning staff have concluded that the introduction of the permanent sensitive land use is incompatible for the area considering the designation and zoning of the adjacent properties. As noted above, development constraints could be created for those lands intended for industrial uses by virtue of a new dwelling, and all of the burden of mitigation and accommodation would be on the developers of the industrial facilities. Based on this, and the policy concerns raised in the paragraphs above, staff cannot support the establishment of a permanent year-round dwelling on the lands.

Haldimand County Zoning By-law HC 1-2020

While the Official Plan establishes the vision for land uses within the County and creates the framework for guiding land use changes until 2026, the Zoning By-law establishes the legal uses for individual properties. The subject lands are zoned 'Agricultural (A)', and the proposed boundary of the zoning amendment is regulated by the Long Point Region Conservation Authority and subject to Natural Hazard overlays. Typically, the 'A' zone permits a single family dwelling, but that opportunity has been removed, through a special provision and was originally enforced through the former City of Nanticoke Zoning By-law NE-1 2000 (Special Provision NANA.2). This special provision is carried forward in the current document, the Haldimand County Zoning By-law HC 1-2020.

Planning staff have investigated records to determine what precipitated the removal of the development opportunities for the subject lands, but have not been able to determine the circumstances. Without this history, Planning staff are unable to determine exactly why the permission to build single family dwelling has been removed.

As noted earlier in the report the key issue with introducing a dwelling on the subject lands is, the potential impact it would have on future development of surrounding lands that have been identified and zoned for industrial uses. To properly achieve the vision of employment use and land development in this area of the County, restrictions on the introduction of sensitive uses (such as residential) are required, including within the zoning by-law. A change to the by-law to now introduce a single detached dwelling would conflict with this intent and potentially compromise the development of surrounding lands. As described throughout the report, it is this key factor that results in staff's position of non-support for the application as presented. Should Council decide to consider this approach, it would require amendments to the recommendations set out in this report.

FINANCIAL/LEGAL IMPLICATIONS:

Not applicable.

STAKEHOLDER IMPACTS:

Building & Municipal Enforcement Division – No objections.

Long Point Region Conservation Authority – No objections, contact LPRCA prior to development,

sufficient room on property to locate dwelling outside of Hazard/Regulation Limits.

MPAC – No objections.

Roads Operations – No objections.

Planning and Development (Development & Design Technologist) – No objections.

Emergency Services – No objections.

Haldimand-Norfolk Health Unit – No objections.

No comments were received from the public or the Mississaugas of the Credit First Nation, Six Nations Council, Hydro One, or Union Gas.

REPORT IMPACTS:

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Location Map.
2. Owner's Sketch 1.
3. Owner's Sketch 2.
4. Provincially Significant Employment Zone.
5. Official Plan Schedule 'A'.